

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROCKY D. FORD

Claimant

VS.

GUTHRIE STEAMING-TANK SERVICE

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

Docket No. 189,421

ORDER

This Application for Review of a Preliminary Hearing Order, entered by Administrative Law Judge George R. Robertson on September 21, 1994, comes on before the Appeals Board at the request of the claimant.

ISSUES

The Administrative Law Judge denied claimant's request for preliminary hearing benefits and the claimant requests the Appeals Board to review the following issues:

- (1) Whether claimant's request for medical treatment, payment of medical expenses and vocational rehabilitation benefits are the result of an accidental injury that arose out of and in the course of claimant's employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the preliminary hearing record and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge denied claimant's request for preliminary hearing benefits finding that the claimant's present need for the requested benefits was due to an intervening accident and not the original accidental injury that occurred while employed by the respondent. When an intervening accident is alleged, the Appeals Board has jurisdiction to review a preliminary hearing order as it raises the issue as to whether or not the claimant's accidental injury arose out of and in the course of his employment with the respondent. See K.S.A. 44-534a(a)(2).

Respondent admits that the claimant suffered an accidental injury to his low back on April 21, 1993, while working for the respondent moving a 55 gallon drum of sand. Medical treatment was voluntarily provided by the respondent, first with Roger Blitz, M.D.,

of Hutchinson, Kansas, and then through Robert L. Eyster, M.D., an orthopedic surgeon in Wichita, Kansas. Dr. Eyster first treated the claimant on July 14, 1993, and diagnosed a low back strain. He prescribed extension exercises and restricted the claimant to avoid lifting. Dr. Eyster kept the claimant off work for another two (2) or three (3) weeks. At that time, diagnostics tests, x-rays, a myelogram, and a CT scan were negative. Claimant next saw Dr. Eyster on August 6, 1993, and showed no improvement. Dr. Eyster, at that time, prescribed a TENS unit, placed the claimant in physical therapy and kept him off work. Dr. Eyster again reviewed the myelogram and CT scan which only showed degenerative disc disease.

On August 7, 1993, the day after the claimant saw Dr. Eyster, he was involved in a physical altercation with Great Bend, Kansas, police officers. This altercation resulted in the claimant being transported to the Central Kansas Medical Center Emergency Room for acute lumbar strain. The emergency room record indicates claimant was noncooperative, belligerent, and smelled of alcohol. After that incident, claimant continued to have back problems and was finally referred by Dr. Eyster on August 30, 1993, for a discogram. Claimant did not reveal to Dr. Eyster that he had an altercation with the police, only that his back had bothered him after changing a tire. A discogram found a herniated disc at the L4-5 level. As a result of this herniation, Dr. Eyster on December 6, 1993, performed a L4-S1 fusion, and a L4-5 laminectomy. Claimant was followed by Dr. Eyster through March 7, 1994, when he was released as having met maximum medical improvement with permanent restrictions and a nine percent (9%) whole body functional impairment rating.

On March 28, 1994, claimant was returning from a trip from Texas when his back became acutely symptomatic while riding for some four (4) hours straight in an automobile. As a result of that trip and his continuing back symptoms, claimant filed this request for additional medical treatment with a physician other than Dr. Eyster and payment of medical expenses that followed his altercation with the police officers and the trip to Texas.

Prior to the filing of this request, the respondent and its insurance carrier had not known about the claimant's altercation with the Great Bend police officers and the trip to Texas. Up to that point, the respondent had voluntarily provided medical treatment for the claimant's low back injury through Dr. Eyster, including the back surgery. However, the respondent now argues that the diagnostic testing prior to the claimant's altercation with the police only established that the claimant had a back strain with preexisting degenerative disc problems. After the altercation, however, the discogram indicated that the claimant now had a herniated disc at L4-5, which was the reason for the surgical intervention. Respondent, therefore, contends that claimant's present complaints are not a natural and probable consequence of his original injury, but are the result of the altercation with Great Bend police officers.

At the request of claimant's attorney, claimant was examined and evaluated by C. Reiff Brown, M.D., an orthopedic surgeon in Great Bend, Kansas, on June 22, 1994. Dr. Brown opined, "There is no evidence that would allow me to say with reasonable medical certainty that the August 7, 1993 incident with the police officers had any significant permanent aggravating affect." Claimant contends that this is uncontradicted medical evidence which proves that the claimant did not suffer an intervening accident.

The Appeals Board disagrees with the claimant and affirms the Administrative Law Judge's decision that denied claimant's request for preliminary benefits. The Appeals Board finds that it is more probably true than not that the claimant's need for surgery and present need for medical treatment is the result of the altercation claimant had with the Great Bend police officers on August 7, 1993, and is not the natural and probable consequence of his work-related injury of April 21, 1993, while employed by the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge George R. Robertson, dated September 21, 1994, that denied claimant's request for benefits, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert Anderson, Ellinwood, Kansas
James M. McVay, Great Bend, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director